

Georgia Department of Community Health

Public Records / Open Records	Policy No. 501
Effective Date: March 1, 2005 Release Date: February 24, 2005	Page 1 of 6

Legal Authority: O.C.G.A. §§ 50-18-70 through 50-18-77, the Georgia Open Records Act.

I. Purpose

The purpose of this policy is to prescribe compliance with the Georgia Open Records Act.

II. Scope

This policy applies to all employees of the Department of Community Health (DCH).

III. Policy

All public records in DCH must be made available for public inspection upon request, pursuant to Georgia's Open Records Act.

- A. The Chief or administrator of each Division and Office in DCH will designate a person to serve as custodian of records and an alternate custodian to be responsible for fulfilling all requests for public records of that Division or Office. All requests for public records will be directed immediately to the custodian or alternate in the respective Division or Office and should be acted upon in accordance with this policy.
- B. Each custodian will provide to the Confidential Secretary in the DCH Office of General Counsel a listing of the types or categories of records maintained in the offices, sections, or units of that Division or Office, in order to facilitate efficient location of records. The custodian is responsible for updating the listing in a timely manner as changes occur.
- C. Responses to requests and the actual production of the documents will generally be made within three (3) business days after receipt by DCH of requests. If the documents cannot reasonably be gathered within that time period, a written description of the documents, along with a timetable for their production, will be provided within that time.
- D. Responses to requests and the charges for records will be uniform.

IV. Definition of Public Records

"Public records" means all documents, papers, letters, maps, books, tapes, photographs, computer based or generated information, or similar material prepared, received or maintained by DCH. DCH staff should use care not to label records in error as "confidential" or "proprietary and confidential." Staff should not assume that documents so labeled are in fact exempt from disclosure. The general rule is that all records of DCH operations and personnel are public, subject only to the exceptions set out in law. If the custodian has any question as to whether or not a document is a public record, the custodian should contact the compliance officer for assistance.

- A. This definition includes items received or maintained by a private person or entity (a contractor or vendor, for example) on behalf of DCH where the records are received or maintained by a private person, firm, corporation or other private entity in the performance of a service or function for or on behalf of DCH, to the extent that such records would be subject to disclosure if received or maintained by DCH. This means, for example, that records in the sole possession of private entities or individuals relating to work performed for DCH are public records.
- B. In the absence of an exception in law, all documents and data collected by a contractor or produced for use by DCH under a contract are public records. DCH will require entities with which it does business to meet their responsibilities to comply with the law.
- C. The definition does not include any computer program or computer software used or maintained in the course of operation of DCH or by its contractors.

V. Procedure

A. Receipt of Requests

- 1. Requests for public records may be written or oral. Requests may be received electronically, by U.S. mail, by facsimile, by hand delivery or by phone.
- 2. Any person may inspect and copy public records for any reason. No one is required to state a reason for a request.
- 3. Upon receipt of a request, DCH staff receiving the request will forward a copy of the request to the Office of General Counsel as soon as possible, preferably the same day that it is received but no later than the next day after it is received. The Office of General Counsel will log all requests for compliance tracking purposes.

4. The General Counsel's office will forward requests as needed to the custodian who is responsible for public records in the Division or office that holds the records.
5. Each custodian will be responsible for locating, compiling, copying and arranging for delivery of those records covered by a request to the Confidential Secretary in the DCH Office of General Counsel.

B. Preparation of Response

1. Where responsive records exist and are readily available, those records must be made available for inspection or copying within three (3) business days after the receipt by DCH of a request. Both the response to the request and the actual production of the documents are due within three (3) business days.
2. If records exist but are not available within three (3) business days of the request, a written description of such records, together with a timetable for their inspection and copying, must be provided to the requester within that time.
3. Records maintained by computer will be made available, where practicable, by electronic means including Internet access, subject to reasonable security restrictions by preventing access to non-requested or non-available records. (See exceptions in Section VI of this policy.)
4. If access to a record is denied in whole or in part, DCH must specify in writing the applicable legal authority exempting such records from disclosure. Specific exceptions must be invoked within the three (3) business days applicable to the response.
5. If an error occurs in identifying an exception, DCH may make a one-time only addition or amendment to the original designation of the applicable exemption for the records. This one-time amendment must be made within five (5) business days of the discovery of any such error or within five (5) business days of the filing of an action to enforce the Open Records Act, whichever is sooner. It is the responsibility of the custodian to review all responses regarding documents maintained the custodian's division or office to ensure accuracy.
6. The Confidential Secretary, in consultation with the General Counsel, Deputy General Counsel, and Compliance Officer, will prepare the response to the requester.
7. Notwithstanding the provisions of subparagraph (6), above, the Division of Health Planning will respond to requests for records in its custody. The

Division will consult with the General Counsel, Deputy General Counsel, and Compliance Officer in preparing responses.

C. Costs and Charges

1. A fee will be charged for the administrative time that it takes to gather the necessary data. The charge may not exceed the salary of the lowest paid full-time employee who has the necessary skills and training to prepare the requested records. The first fifteen (15) minutes will not be subject to this charge.
2. Prior to fulfilling the request and prior to the assessment of fees, the person who made the request must be notified of the estimated costs of the copying, search, retrieval, and any other administrative fees.
3. Records will be provided by the most economical means available. Whenever practicable, records will be provided electronically. To be practicable, the requester must be agreeable to the format and the records must be subject to reasonable security restrictions, so that no confidential or non-requested records are accessible.
4. Where information is maintained on a computer system, DCH will charge only for the cost of a computer disk or tape onto which the information is loaded and for the administrative time necessary to retrieve the information and provide the downloading. Records may be provided where practicable on CD, for which the cost would ordinarily be \$15.00, which would include nominal cost of administrative staff time and the actual disk. Added administrative staff costs may increase the charge. Where records may be provided electronically, email would be the preferable means of delivery, in order to expedite delivery to the requester and to minimize costs. No new fees other than those directly attributable to providing access may be assessed where records are made available by electronic means.
5. DCH will charge \$0.25 per page for paper copies of records.
6. The Office of General Counsel will prepare an invoice that will identify costs associated with the request. Upon receipt of payment, the Office of General Counsel will issue a receipt and transmit the records to the requester. A copy of the receipt and the invoice will be sent to Accounting Services along with the check or money order used for payment.
7. DCH will accept a cashier's check, money order, or check from an established business entity as payment. Counter checks, cash, credit cards, and debit cards will not be accepted. DCH retains the discretion to decline to accept personal checks.

VI. Categories of Exceptions

A. Personal Identifying Information

1. An individual's social security number and insurance or medical information must be redacted from otherwise open records.
2. Access to the types of information listed below shall be restricted to DCH staff or agents:
 - a. Names, addresses and all types of personal identification numbers, including, but not limited to Medicaid member number, Medicaid provider or payee number, driver's license number, vehicle identification number, and vehicle registration number
 - b. Medical services proposed to be or actually provided to an individual
 - c. Social and economic conditions or circumstances of an individual
 - d. Agency evaluation of an individual's personal information
 - e. Medical data about an individual, including diagnosis and past history of disease or disability
3. Access to information set forth in subparagraph (2), above, is available without the permission of a Medicaid applicant or recipient but will be granted only where the entity seeking the information is performing one of the following functions:
 - a. Establishing eligibility; or
 - b. Determining the appropriate amount of medical assistance.
4. Protected health information, as defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), is not public information and may not under any circumstances be released under a request for public records.

B. Confidential Data and Information

1. In addition to the personal information described above, any and all information that is confidential or privileged under state or federal law is not public record and will not be released under a request for public records.

2. Examples of confidential or privileged information are individually identifying information about Medicaid applicants and recipients, trade secrets collected by a state agency in the conduct of research, and attorney-client privileged communications.
3. Information concerning an investigation conducted by or on behalf of DCH is not subject to disclosure until the investigation, and any resulting prosecution or litigation, has been concluded.

C. Special Reports

1. No state employee or agency is required by the Open Records Act to prepare reports, summaries, or compilations of information not in existence at the time of receipt of a request.
2. Special reports, such as data summaries from the Decision Support System (DSS), are not required by the Open Records Act to be created; however, once in existence, those reports may become public records.

D. Requests for Production of Documents and Subpoenas

1. Responses to Requests for Production of Documents and compliance with a subpoena are required in accordance with law but are not governed by the Open Records Act.
2. Certain deadlines apply to a Request for Production of Documents and to a subpoena and must be observed. Guidance may be found in the appropriate DCH policies governing these responses.

VII. Compliance Monitoring

- A. Compliance with the law and this policy by DCH is required.
- B. Deficiencies in compliance by DCH staff will be addressed through targeted training and reinforcement of policy, as needed. Willful noncompliance with the law or policy may be sanctioned by disciplinary action, up to and including dismissal.

Approved By:

Tom Byles

Date:

2/24/05